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1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP  
 2 Loren Kieve (Bar No. 56280)  
 3 Deepak Gupta (Bar No. 226991)  
 4 Bianca Thomas (Bar No. 228788)  
 5 Dugan Bliss (Bar No. 229623)  
 50 California Street, 22nd Floor  
 San Francisco, California 94111  
 Tel: (415) 875-6600  
 Fax: (415) 875-6700

6 LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
 OF THE SAN FRANCISCO BAY AREA  
 7 Michael Harris (Bar No. 118234)  
 131 Steuart Street, Suite 400  
 8 San Francisco, CA 94105  
 Tel: (415) 543-9444  
 9 Fax: (415) 543-0296

10 Attorneys for Plaintiff  
 Samantha Allen-Wise

11  
 12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO/OAKLAND DIVISION

15 **C 04 22287 JCS**

16 SAMANTHA ALLEN-WISE,  
 17  
 18 Plaintiff,

19 v.

20 BEBE STORES INCORPORATED, a  
 21 California Corporation, and MELISSA  
 22 BUNFILL, an individual,  
 23 Defendants.

) CASE NO.

)  
 ) COMPLAINT FOR DAMAGES AND  
 ) INJUNCTIVE RELIEF FOR DEPRIVATION  
 ) OF EQUAL RIGHTS UNDER THE LAW,  
 ) DISCRIMINATION IN PLACES OF PUBLIC  
 ) ACCOMMODATION, CONSPIRACY TO  
 ) DENY CIVIL RIGHTS, FAILURE TO  
 ) PREVENT CONSPIRACY TO DENY CIVIL  
 ) RIGHTS, VIOLATION OF THE UNRUH  
 ) CIVIL RIGHTS ACT, UNFAIR BUSINESS  
 ) PRACTICES, SLANDER PER SE,  
 ) INTENTIONAL INFLICTION OF  
 ) EMOTIONAL DISTRESS AND NEGLIGENT  
 ) HIRING, RETENTION, SUPERVISION AND  
 ) TRAINING;

) DEMAND FOR JURY TRIAL

26  
 27 Plaintiff Samantha Allen-Wise complains against Bebe Stores Incorporated and Melissa  
 28 Bunfill as follows:

COMPLAINT

18031/69062.3

**INTRODUCTORY STATEMENT**

1. This action is brought by Samantha Allen-Wise, an African-American woman who was subjected to racially discriminatory, slanderous and outrageous statements and behavior at a retail clothing store owned and operated by defendant Bebe Stores Incorporated. She is bringing this action for:

- (a) deprivation of equal rights under law (42 U.S.C. § 1981);
- (b) discrimination in places of public accommodation (42 U.S.C. § 2000a);
- (c) conspiracy to deprive Ms. Allen-Wise of her civil rights (42 U.S.C. § 1985(3));
- (d) failure to prevent conspiracy to deprive Ms. Allen-Wise of her civil rights (42 U.S.C. § 1986);
- (e) violation of the Unruh Civil Rights Act, California Civil Code § 51;
- (f) violation of California Business and Professions Code § 17200;
- (g) slander *per se* under California Civil Code § 46 and California tort law;
- (h) intentional infliction of emotional distress under California tort law; and
- (i) negligent hiring, retention, supervision and training under California tort law.

**THE PARTIES**

2. Plaintiff Samantha Allen-Wise is a resident of Oakland, California.

3. Defendant Bebe Stores Incorporated ("Bebe") is a California corporation with its principal place of business at 400 Valley Drive in Brisbane, California. Bebe owns and operates a retail clothing store located at 21 Grant Avenue in San Francisco, California.

4. On information and belief, defendant Melissa Bunfill is a California resident who is and/or was employed by defendant Bebe at the retail clothing store owned and operated by Bebe at 21 Grant Avenue in San Francisco, California.

**JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. §§ 1981, 1985, 1986, and 2000a-6.



1           12.     On June 9, 2003, shortly after returning from Memphis, Ms. Allen-Wise went to  
2 the Bebe retail store at 21 Grant Avenue in San Francisco, California, to return the skirt and  
3 blouse. Ms. Allen-Wise was accompanied by a friend, Marlene McCoy. Ms. Allen-Wise had  
4 with her the skirt and blouse she intended to return, in their original and unworn condition, with  
5 all tags attached and in their original condition. Ms. Allen-Wise also had with her the original  
6 receipts from the purchase of the skirt and blouse.

7           13.     Ms. Allen-Wise approached the check-out register and asked for a refund for the  
8 return of the blouse and skirt. Ms. Allen-Wise was informed by the Bebe employee at the check-  
9 out register that, as a matter of Bebe policy, only a manager was authorized to process the return  
10 of the items. On information and belief, this policy was only applied to African-Americans.

11           14.     The store manager, defendant Melissa Bunfill, came to the check-out register and  
12 Ms. Allen-Wise explained that she wanted to return the skirt and blouse because she had never  
13 worn them, and would not have an opportunity to wear them. Ms. Allen-Wise gave Ms. Bunfill  
14 the skirt and blouse in their original and unworn condition, with all tags attached and in their  
15 original condition. Ms. Allen-Wise also gave Ms. Bunfill the receipts for the skirt and blouse,  
16 the credit card Ms. Allen-Wise used to purchase the clothing and Ms. Allen-Wise's California  
17 driver's license for identification.

18           15.     After glancing at the skirt and blouse, Ms. Bunfill stated that she would not accept  
19 the skirt and blouse for a return because the items had been worn and were soiled. In response,  
20 Ms. Allen-Wise explained that the clothing had never been worn.

21           16.     Ms. Bunfill then stated, "You people always do this." The clear racist meaning  
22 behind Ms. Bunfill's statement was that African-Americans always attempt to make or have a  
23 practice of making fraudulent returns.

24           17.     Ms. Bunfill then made the additional claim that the tags on the clothing were not  
25 the same kind of tags used by Bebe. Ms. Bunfill accused Ms. Allen-Wise of removing the  
26 original tags, wearing and soiling the skirt and blouse, and then attaching forged tags to the  
27 clothing to perpetrate a fraud on Bebe.

1           18.     To establish that she had not worn the clothes and then placed forged tags on  
2     them, Ms. Allen-Wise retrieved a brand new skirt from a display nearby bearing identical tags to  
3     those that were on the skirt and blouse that Ms. Allen-Wise was attempting to return. Ms.  
4     Bunfill still refused to accept the skirt and blouse for return.

5           19.     Distressed, humiliated and outraged by Ms. Bunfill's false, racially discriminatory  
6     and slanderous statements and behavior, Ms. Allen-Wise stated her intention to file a complaint  
7     with Bebe's corporate headquarters. It was only then that Ms. Bunfill even considered accepting  
8     the items for a refund.

9           20.     Ms. Bunfill continued to repeatedly state, however, "I know you wore it, I know  
10    for a fact you wore it, I know you wore it because that is what you people do."

11          21.     Ms. Allen-Wise took back the skirt and blouse and said that she would be filing a  
12    complaint against Ms. Bunfill and Bebe with Bebe's corporate headquarters because of Ms.  
13    Bunfill's racially discriminatory and false allegations. Ms. Bunfill then demanded that Ms.  
14    Allen-Wise leave the store.

15          22.     While Ms. Allen-Wise was attempting to return the skirt and blouse, and while  
16    she was being subjected to Ms. Bunfill's outrageous behavior, Ms. Allen-Wise's friend, Marlene  
17    McCoy, noticed another Bebe employee trying to get her attention. Ms. McCoy approached the  
18    employee, whose name, on information and belief, is Adalia Rubai. Ms. Rubai stated to Ms.  
19    McCoy that in the time period since Ms. Bunfill had become manager of the Bebe store at  
20    21 Grant Avenue, the store had experienced many problems with Ms. Bunfill's behavior similar  
21    to the problem Ms. Allen-Wise was then experiencing with Ms. Bunfill.

22          23.     Ms. McCoy asked Ms. Rubai if she could provide the names of Bebe corporate  
23    personnel so that a formal complaint could be lodged against Ms. Bunfill. Ms. Rubai retrieved a  
24    binder containing the names of Bebe corporate personnel and began giving names and contact  
25    information to Ms. McCoy. Ms. Bunfill noticed that Ms. Rubai had taken out the binder and  
26    Ms. Bunfill grabbed the binder from Ms. Rubai so that no further information could be given to  
27    Ms. McCoy.

28

1           24.     After Ms. Bunfill demanded that Ms. Allen-Wise leave the store, Ms. Allen-Wise  
2 asked that the San Francisco Police Department be called so that an official report could be made  
3 documenting the entire incident.

4           25.     While awaiting the arrival of the police, Ms. Allen-Wise overheard Ms. Bunfill  
5 tell another co-worker, who had not been in the store during the initial exchange, that Ms. Allen-  
6 Wise had physically hit Ms. Bunfill. Ms. Allen-Wise immediately advised Ms. Bunfill and her  
7 co-worker that Ms. Allen-Wise had not, in fact, ever physically hit or even touched Ms. Bunfill.

8           26.     Two police officers eventually arrived and took a statement from Ms. Bunfill,  
9 which included the false allegation that she had been physically hit by Ms. Allen-Wise. The  
10 police officers also took a statement from Ms. Allen-Wise. After reviewing the store security  
11 camera, the police officers confirmed that Ms. Allen-Wise did not physically hit Ms. Bunfill.  
12 Despite this evidence of Ms. Bunfill's false allegation, and as it became evident to Ms. Allen-  
13 Wise, the responding police officers did not take the matter seriously. Distressed, humiliated and  
14 outraged, Ms. Allen-Wise left the store with Ms. McCoy.

15           27.     Numerous other customers were present in the store and witnessed the exchange  
16 between Ms. Bunfill and Ms. Allen-Wise, including Ms. Bunfill's false, racially discriminatory  
17 and slanderous statements and behavior, which added to Ms. Allen-Wise's distress, humiliation  
18 and outrage.

19           28.     Later that day, on June 9, 2003, Ms. Allen-Wise, still distressed, humiliated and  
20 outraged by Ms. Bunfill's false, racially discriminatory and slanderous statements and behavior,  
21 made several calls to Bebe's corporate headquarters to complain about the discrimination and  
22 other outrageous conduct to which Ms. Allen-Wise had been subjected.

23           29.     In the days following June 9, 2003, Ms. Allen-Wise took the skirt and blouse to  
24 another Bebe retail store to return the items. A refund for the skirt and blouse was promptly  
25 issued and the Bebe sales clerk at no point suggested that the dress had been worn or that the tags  
26 had been altered.

27           30.     Approximately five weeks after making her complaints to Bebe's corporate  
28 headquarters, Ms. Allen-Wise received a telephone call from Craig Walsey, Bebe's General

1 Counsel. Mr. Walsey informed Ms. Allen-Wise that he had conducted a “full investigation” and  
2 found no reason to believe that racial discrimination had occurred.

3 31. Ms. Allen-Wise asked Mr. Walsey for additional details as to what comprised the  
4 “full investigation.” Mr. Walsey told Ms. Allen-Wise that he did not do any of the things that  
5 would constitute a full investigation: he did not review a police report; he did not attempt to  
6 review the tape from the in-store security camera; he did not speak to either of the responding  
7 police officers; and he did not attempt to obtain statements from any of the individuals involved  
8 in the incident or from any individuals who witnessed the incident.

9  
10 **FIRST CLAIM FOR RELIEF**

11 Deprivation of Equal Rights Under the Law - Action for Damages  
(42 U.S.C. § 1981)  
(Against All Defendants)

12 32. Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through  
13 31 above.

14 33. Section 1981(a) of Title 42 of the United States Code provides in part, “All  
15 persons within the jurisdiction of the United States shall have the same right in every State and  
16 Territory to make and enforce contracts ... as is enjoyed by white citizens...” Section 1981(b)  
17 defines “make and enforce contracts” as including “the making, performance, modification, and  
18 termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of  
19 the contractual relationship.” Section 1981(c) states that these rights “are protected against  
20 impairment by nongovernmental discrimination....”

21 34. By their conduct alleged above, defendants denied, impaired and/or interfered  
22 with Ms. Allen-Wise's right to make and enforce a contract with Bebe under the same terms as  
23 Caucasian people and other non-African-American citizens, on the basis of intentional racial  
24 discrimination.

25 The facts in support of this allegation are *inter alia* as follows:

26 (a) Ms. Allen-Wise, an African-American woman, was told by Bebe personnel that  
27 only managers are allowed to process returns, a policy applied in a differential  
28 manner.

- 1 (b) Ms. Bunfill refused to accept a return of unworn clothing from Ms. Allen-Wise  
2 within a reasonable and contractually permissible time period.
- 3 (c) Ms. Bunfill's allegation that the dress had been worn was pretextual.
- 4 (d) Ms. Bunfill's allegation that the plastic connector on the tag was of a different  
5 variety than was customarily used by Bebe was pretextual.
- 6 (e) Ms. Bunfill stated, "You people always do this," referring to Ms. Allen-Wise's  
7 race.
- 8 (f) Ms. Bunfill stated, "I know you wore it, I know for a fact you wore it, I know you  
9 wore it because that is what you people do," referring to Ms. Allen-Wise's race.
- 10 (g) Ms. Bunfill prevented a co-worker from providing Ms. Allen-Wise with the  
11 corporate contacts and phone numbers where she could file a complaint.
- 12 (h) Ms. Bunfill told another co-worker the falsehood that Ms. Allen-Wise had  
13 physically hit her.
- 14 (i) Ms. Bunfill told the police the falsehood that Ms. Allen-Wise had physically hit  
15 her.
- 16 (j) Ms. Bunfill attempted to have Ms. Allen-Wise arrested or detained.
- 17 (k) Ms. Bunfill's actions resulted in distress, humiliation and outrage to Ms. Allen-  
18 Wise.
- 19 (l) Ms. Allen-Wise was asked to leave the store and not to return.
- 20 (m) Ms. Bunfill had engaged in such behavior on prior occasions.
- 21 (n) Ms. Allen-Wise was later able to return the skirt and blouse to another Bebe store  
22 "no questions asked."
- 23 (o) Bebe took approximately five weeks to respond to Ms. Allen-Wise regarding her  
24 complaint.
- 25 (p) Craig Walsey, Bebe's general counsel told Ms. Allen-Wise that he had conducted  
26 a full investigation, which was a falsehood.
- 27 (q) Bebe failed to conduct a full investigation of the events of June 9, 2003.
- 28

1           35. As an African-American, Ms. Allen-Wise is a member of a protected class. By  
2 their actions, defendants denied, impaired and/or interfered with (1) Ms. Allen-Wise's contractual  
3 right to return unworn clothing items within a period contemplated by the retail sales contract;  
4 (2) her right to the benefit of the covenant of good faith and fair dealing; and (3) her right to  
5 make new contracts, by asking her to leave the Bebe store, after she was made the victim of  
6 racial discrimination.

7           36. The facts and circumstances surrounding the event support a rational inference of  
8 intentional racial discrimination and strongly support a finding of racial animus.

9           37. By denying Ms. Allen-Wise the right to make and enforce a contract with Bebe,  
10 defendants denied Ms. Allen-Wise of the right to enjoy all the benefits, privileges, terms and  
11 conditions of such a contractual relationship, all in violation of 42 U.S.C. § 1981.

12           38. Ms. Bunfill was acting in the scope of her employment and on behalf of Bebe,  
13 both as a store employee and as a store manager. She was acting as an agent of Bebe in denying  
14 Ms. Allen-Wise the return of an unworn item, a return to which she was contractually entitled.  
15 Defendant Bebe is liable for her actions under this cause of action under the doctrine of  
16 *respondeat superior*.

17           39. Defendant Bebe, despite having knowledge of the discriminatory conduct of Ms.  
18 Bunfill, failed to take appropriate remedial action before and after Ms. Allen-Wise informed it of  
19 what had occurred, and is therefore also liable under the doctrine of *respondeat superior*.

20           40. Bebe was aware of a pattern and practice of discrimination within its organization,  
21 in particular on the part of Ms. Bunfill, and failed to act appropriately to prevent repeated civil  
22 rights violations and is therefore liable under the doctrine of *respondeat superior*.

23           41. Defendant Bebe exercises, owns and controls and exerts influence over the Bebe  
24 shop on Grant Avenue and is therefore liable under this cause of action.

25           42. Defendants' wrongful conduct was purposeful.

26           43. As a proximate result of defendants' wrongful conduct, Ms. Allen-Wise has  
27 suffered damage, including emotional injury, in an amount to be proven at trial, and is further  
28 entitled to recover her attorneys' fees and costs. She suffered emotional injury in that she

1 became disgraced, humiliated, remains angry and has developed a fear of entering retail  
 2 establishments, and purchasing and returning items therein. Her distress is and was manifested  
 3 by anxiety, nervousness, stomach aches, head aches, sleep loss, appetite loss and depression,  
 4 among other things.

5 44. Ms. Allen-Wise is informed and believes and alleges that defendants' wrongful  
 6 conduct was intentional, malicious, oppressive, in gross disregard of plaintiff's rights and was  
 7 intended to cause injury to Ms. Allen-Wise. Ms. Allen-Wise is therefore entitled to an award of  
 8 exemplary or punitive damages.

### 9 **SECOND CLAIM FOR RELIEF**

10 Discrimination in Places of Public Accommodation  
 (42 U.S.C. § 2000a)  
 11 (Against All Defendants)

12 45. Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through  
 13 44 above.

14 46. Section 2000a(a) of Title 42 of the United States Code provides, "All persons  
 15 shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges,  
 16 advantages, and accommodations of any place of public accommodation, as defined in this  
 17 section, without discrimination or segregation on the ground of race, color, religion, or national  
 18 origin."

19 47. Bebe is a place of public accommodation, as defined in Section 2000a(a) of  
 20 Title 42.

21 48. By their conduct alleged above, defendants denied Ms. Allen-Wise the full and  
 22 equal enjoyment of the goods, services, privileges, and advantages of the Bebe store without  
 23 discrimination based on her race and color. Defendants' conduct of subjecting store customers to  
 24 false, racist, and outrageous remarks deprived Ms. Allen-Wise of the full and equal enjoyment of  
 25 her contractual rights with Bebe and of Bebe's clothing and apparel. Bebe, by its poor and  
 26 inadequate investigation into this matter, has demonstrated its willingness to have this kind of  
 27 unacceptable behavior perpetrated on other African-American patrons.  
 28

1           49.     Ms. Bunfill was acting within the course and scope of her employment and/or  
2 agency with Bebe so that Bebe is liable for Ms. Bunfill's conduct under the doctrine of  
3 *respondeat superior*.

4           50.     By reason of the foregoing, Ms. Allen-Wise asserts a claim for injunctive relief,  
5 costs and attorneys' fees pursuant to 42 U.S.C. § 2000a-3.

6  
7                               **THIRD CLAIM FOR RELIEF**

8                               Conspiracy to Deprive Ms. Allen-Wise of her Civil Rights - Action for Damages  
9   (42 U.S.C. § 1985(3))  
10    (Against All Defendants)

11           51.     Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through  
12 37, 41 through 48 and 50 above.

13           52.     Section 1985(3) of Title 42 of the United States Code provides in part, "If two or  
14 more persons in any State or Territory conspire ... for the purpose of depriving, either directly or  
15 indirectly, any person or class of persons of the equal protection of the laws, or of equal  
16 privileges and immunities under the laws; ... in any case of conspiracy set forth in this section, if  
17 one or more persons engaged therein do, or cause to be done, any act in furtherance of the object  
18 of such conspiracy, whereby another is injured in his person or property, or deprived of having  
19 and exercising any right or privilege of a citizen of the United States, the party so injured or  
20 deprived may have an action for the recovery of damages occasioned by such injury or  
21 deprivation, against any one or more of the conspirators."

22           53.     If the Court finds Ms. Bunfill to have been acting outside of the scope of her  
23 employment, Ms. Bunfill and Bebe conspired to deprive, impair and/or interfere with Ms. Allen-  
24 Wise's rights to (1) make and enforce contracts under 42 U.S.C. section 1981; and (2) to enjoy  
25 the full and equal enjoyment of the goods and services offered by the Bebe under 42 U.S.C.  
26 section 2000a.

27           54.     By their conduct, defendants conspired to deprive Ms. Allen-Wise and the  
28 protected class to which she belongs of their rights under 42 U.S.C. sections 1981 and 2000a and  
to promote the continued and ongoing violation thereof, for reasons of discriminatory intent and

1 racial animus, and to obstruct the investigation of the civil rights violations that were perpetrated  
2 upon Ms. Allen-Wise.

3 The facts in support of this conspiracy are as follows:

- 4 (a) Bebe had a policy or practice or allowed its store managers to follow a practice of  
5 requiring returns from African-American customers to be approved by a manager,  
6 where a similar requirement was not imposed on returns from customers of other  
7 races.
- 8 (b) Bebe was aware of the racial animus exhibited by Ms. Bunfill on the day of the  
9 incident.
- 10 (c) Bebe was aware of a pattern and practice of discriminatory behavior on the part of  
11 Ms. Bunfill.
- 12 (d) After being notified of the incident and Ms. Bunfill's actions, Mr. Walsey, Bebe's  
13 General Counsel, did not conduct a full investigation of the incident.
- 14 (e) Mr. Walsey falsely stated to Ms. Allen-Wise that he had conducted a full  
15 investigation of the incident.
- 16 (f) Mr. Walsey stated that he was satisfied no racial discrimination had occurred.
- 17 (g) There were no consequences to Ms. Bunfill as a result of her actions, and no  
18 acknowledgment on the part of Bebe as to the incident.
- 19 (h) There are Bebe corporate policies designed to prevent and regulate discriminatory  
20 actions by employees.
- 21 (i) Bebe did not enforce these policies against Ms. Bunfill.
- 22 (j) Bebe did not enforce or modify terms in its employment agreement with Ms.  
23 Bunfill to regulate her discriminatory behavior.
- 24 (k) Bebe has never acknowledged or apologized for the incident.

25 55. The facts support an inference of the existence of an agreement, a mutual  
26 understanding and joint and concerted activity between Ms. Bunfill and Bebe, along with  
27 obstructionist activity to evidence a conspiracy in furtherance of the continued and ongoing  
28

1 violation of Ms. Allen-Wise's civil rights under both 42 U.S.C. sections 1981 and 2000a, as  
2 detailed above.

3 56. A racial animus was at the root of Ms. Bunfill and Bebe's actions. Their  
4 conspiracy was aimed at interfering with her rights that are protected against private  
5 encroachment by 42 U.S.C. sections 1981 and 2000a.

6 57. Overt acts were taken in furtherance of this conspiracy, *inter alia*, the  
7 discriminatory actions of Ms. Bunfill and the statements by Mr. Walsey that he had conducted a  
8 full investigation when in fact he had not.

9 58. The conspiracy between defendants has resulted in the continued and ongoing  
10 violation of Ms. Allen-Wise and others of her protected class' rights under 42 U.S.C. sections  
11 1981 and 2000a, as detailed above.

12 59. As a proximate result of defendants' wrongful conduct, Ms. Allen-Wise has  
13 suffered damage, including emotional injury, in an amount to be proven at trial, and is further  
14 entitled to recover her attorneys' fees and costs. She suffered emotional injury in that she  
15 became disgraced, humiliated, remains angry and has developed a fear of entering retail  
16 establishments, and purchasing and returning items therein. Her distress is and was manifested  
17 by anxiety, nervousness, stomach aches, head aches, sleep loss, appetite loss and depression,  
18 among other things.

19 60. Ms. Allen-Wise is informed and believes and thereon alleges that defendants'  
20 wrongful conduct was intentional, malicious, oppressive, in gross disregard of plaintiff's rights  
21 and was intended to cause injury to Ms. Allen-Wise. Ms. Allen-Wise is therefore entitled to an  
22 award of exemplary or punitive damages.

23 **FOURTH CLAIM FOR RELIEF**

24 Failure to Prevent Conspiracy - Action for Damages  
25 (42 U.S.C. §§ 1986)  
(Against All Defendants)

26 61. Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through  
27 37, 41 through 48 and 50 through 60 above.  
28

62. Section 1986 of Title 42 of the United States Code provides in part, "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured."

63. Defendants Ms. Bunfill and Bebe both had the power to prevent or aid in the prevention of the conspiratorial acts that resulted in the continued and ongoing violation of Ms. Allen-Wise and others of her protected class' rights under 42 U.S.C. sections 1981 and 2000a, as detailed above.

64. Defendants' actions and omissions were based on racial animus.

65. Defendants' wrongful conduct was purposeful.

66. As a proximate result of defendants' wrongful conduct, Ms. Allen-Wise has suffered damage, including emotional injury, in an amount to be proven at trial, and is further entitled to recover her attorneys' fees and costs. She suffered emotional injury in that she became disgraced, humiliated, remains angry and has developed a fear of entering retail establishments, and purchasing and returning items therein. Her distress is and was manifested by anxiety, nervousness, stomach aches, head aches, sleep loss, appetite loss and depression, among other things.

67. Defendants' wrongful conduct was intentional, malicious, oppressive, in gross disregard of plaintiff's rights and was intended to cause injury to Ms. Allen-Wise. She is therefore entitled to an award of exemplary or punitive damages.

#### **FIFTH CLAIM FOR RELIEF**

Discrimination by Business Establishment - Action for Damages  
(California Civil Code §§ 51, 51.5 - Unruh Civil Rights Act)  
(Against All Defendants)

68. Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through 50 above.

69. Section 51 of the California Civil Code provides that “[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

70. Bebe is a “business establishment” as that term is defined by California Civil Code § 51.

71. Defendants denied to Ms. Allen-Wise the full and equal accommodations, advantages, facilities, privileges, and services Bebe provides to others, because of Ms. Allen-Wise’s race, all in violation of California Civil Code §§ 51 and 51.5, by:

(a) denying Ms. Allen-Wise the right to enforce a contract with Bebe, because of Ms. Allen-Wise’s race, in violation of the law;

(b) denying Ms. Allen-Wise the right to enjoy all the benefits, privileges, terms and conditions of a contractual relationship with Bebe, because of Ms. Allen-Wise’s race, in violation of the law;

(c) subjecting Ms. Allen-Wise to harassing, embarrassing and humiliating conduct, because of Ms. Allen-Wise’s race, in violation of the law;

(d) denying Ms. Allen-Wise a prompt refund, because of Ms. Allen-Wise’s race, in violation of the law;

(e) falsely accusing Ms. Allen-Wise of fraud, because of Ms. Allen-Wise’s race, in violation of the law;

(f) falsely accusing Ms. Allen-Wise of assault and battery, because of Ms. Allen-Wise’s race, in violation of the law;

(g) thwarting Ms. Allen-Wise’s efforts to gather public corporate information to file a formal complaint, because of Ms. Allen-Wise’s race, in violation of the law.

72. Defendants’ discriminatory conduct was intentional.

73. Ms. Bunfill was acting within the course and scope of her employment and/or agency with Bebe so that Bebe is liable for Ms. Bunfill’s conduct under the doctrine of *respondeat superior*.

74. As a proximate result of defendants' conduct, Ms. Allen-Wise has suffered damage in an amount to be proven at trial, and is further entitled to recover her attorneys' fees and costs, as well as statutory damages in an amount to be determined at trial, and trebled by the court.

75. Defendants' conduct was intentional and committed maliciously, oppressively and/or fraudulently and in conscious disregard of the rights of Ms. Allen-Wise, so as to subject Defendants to an award of exemplary and/or punitive damages pursuant to the provisions of California Civil Code Section 3294.

76. Bebe knew or had reason to know of the unfitness of Ms. Bunfill and employed her with a conscious disregard of the rights or safety of others and/or Bebe authorized and/or ratified Ms. Bunfill's wrongful conduct, so as to subject Bebe to an award of exemplary and/or punitive damages pursuant to the provisions of California Civil Code Section 3294.

#### **SIXTH CLAIM FOR RELIEF**

Unfair Business Practices - Injunctive Relief  
(California Business and Professions Code § 17200)  
(Against All Defendants)

77. Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through 50 and 68 through 76 above.

78. California Business and Professions Code Sections 17200, et seq., prohibits unfair and deceptive business practices.

79. Defendants engaged in unfair and deceptive business practices by:

(a) denying Ms. Allen-Wise the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations Bebe provides to others, because of Ms. Allen-Wise's race, in violation of the law;

(b) denying Ms. Allen-Wise the right to enforce a contract with Bebe, because of Ms. Allen-Wise's race, in violation of the law;

(c) denying Ms. Allen-Wises the right to enjoy all the benefits, privileges, terms and conditions of a contractual relationship with Bebe, because of Ms. Allen-Wise's race, in violation of the law;

1 (d) subjecting Ms. Allen-Wise to harassing, embarrassing and humiliating  
 2 conduct;  
 3 (e) denying Ms. Allen-Wise a prompt refund;  
 4 (f) falsely accusing Ms. Allen-Wise of fraud;  
 5 (g) falsely accusing Ms. Allen-Wise of assault and battery;  
 6 (h) thwarting Ms. Allen-Wise's efforts to gather public corporate information  
 7 so as to file a formal complaint.

8 80. Ms. Bunfill was acting within the course and scope of her employment and/or  
 9 agency with Bebe so that Bebe is liable for Ms. Bunfill's conduct under the doctrine of  
 10 *respondeat superior*.

11 81. On information and belief, defendants' conduct is continuing in that defendants  
 12 continue to engage in unfair and deceptive business practices as described above.

13 82. Defendants' conduct, unless and until enjoined and restrained by order of this  
 14 Court, has caused, and will continue to cause, great and irreparable injury to Ms. Allen-Wise and  
 15 to all people doing business with Bebe.

16 83. Ms. Allen-Wise has no adequate remedy at law for the injuries already inflicted  
 17 and likely to continue in that defendants' continue to engage in the described conduct and Ms.  
 18 Allen-Wise will be required, unless the defendants' wrongful conduct is enjoined, to maintain a  
 19 multiplicity of judicial proceedings to protect her interests and the interests of the public. Ms.  
 20 Allen-Wise is further entitled to recover her attorneys' fees and costs.

#### 21 **SEVENTH CLAIM FOR RELIEF**

22 Slander *Per Se*  
 (Against All Defendants)

23 84. Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through  
 24 50 and 68 through 83 above.

25 85. California Civil Code Section 46 prohibits slander.

26 86. Ms. Bunfill orally uttered and communicated to other persons, including but not  
 27 limited to, police officers, Bebe employees and Bebe customers, that Ms. Allen-Wise had  
 28 committed a crime by engaging in fraud and related crimes by attempting to return merchandise

1 that had already been worn and had forged tags. These statements were false and unprivileged,  
2 and Ms. Bunfill knew these statements to be false at the time the statements were uttered.

3 87. Ms. Bunfill orally uttered and communicated to other persons, including but not  
4 limited to, police officers, Bebe employees and Bebe customers, that Ms. Allen-Wise had  
5 committed a crime by engaging in assault and battery and related crimes by physically attacking  
6 Ms. Bunfill. These statements were false and unprivileged, and Ms. Bunfill knew these  
7 statements to be false at the time the statements were uttered.

8 88. As a proximate result of the slanderous conduct of Ms. Bunfill, Ms. Allen-Wise  
9 was subjected to severe emotional distress including, but not limited to, humiliation and mental  
10 anguish, manifested by anxiety, nervousness, stomach aches, head aches, sleep loss, appetite loss  
11 and depression, among other things, all to Ms. Allen-Wise's damage in an amount to be  
12 determined at time of trial.

13 89. Ms. Bunfill was acting within the course and scope of her employment and/or  
14 agency with Bebe so that Bebe is liable for Ms. Bunfill's conduct under the doctrine of  
15 *respondeat superior*.

16 90. The actions of Ms. Bunfill were intentional and committed maliciously,  
17 oppressively and/or fraudulently and in conscious disregard of the rights of Ms. Allen-Wise, so  
18 as to subject Ms. Bunfill to an award of exemplary and/or punitive damages pursuant to the  
19 provisions of California Civil Code Section 3294.

20 91. Bebe knew or had reason to know of the unfitness of Ms. Bunfill and employed  
21 her with a conscious disregard of the rights or safety of others and/or Bebe authorized and/or  
22 ratified Ms. Bunfill's wrongful conduct, so as to subject Bebe to an award of exemplary and/or  
23 punitive damages pursuant to the provisions of California Civil Code Section 3294.

24  
25 **EIGHTH CLAIM FOR RELIEF**  
26 Intentional Infliction of Emotional Distress  
(Against All Defendants)

27 92. Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through  
28 50 and 68 through 91 above.

1           93.     The conduct of Ms. Bunfill as alleged herein, including, but not limited to racially  
2 discriminatory and slanderous statements and actions, was outrageous, as it exceeded the bounds  
3 of common decency tolerated by a civilized society, and was intended to cause Ms. Allen-Wise  
4 to suffer emotional distress or was committed with reckless disregard to the probability of  
5 causing Ms. Allen-Wise to suffer emotional distress.

6           94.     The conduct of Ms. Bunfill as alleged herein has caused Ms. Allen-Wise to suffer  
7 severe emotional distress, including, but not limited to, humiliation and mental anguish  
8 manifested by anxiety, nervousness, stomach aches, head aches, sleep loss, appetite loss and  
9 depression, among other things, all to Ms. Allen-Wise's damage in an amount to be determined  
10 at time of trial.

11           95.     Because Ms. Bunfill was acting within the course and scope of her employment  
12 and/or agency with Bebe, Bebe is liable for Ms. Bunfill's conduct under the doctrine of  
13 *respondeat superior*.

14           96.     Ms. Allen-Wise is informed and believes and thereon alleges that the actions of  
15 Ms. Bunfill were intentional and committed maliciously, oppressively and/or fraudulently and in  
16 conscious disregard of the rights of Ms. Allen-Wise, so as to subject Ms. Bunfill to an award of  
17 exemplary and/or punitive damages pursuant to the provisions of California Civil Code  
18 Section 3294.

19           97.     Bebe knew or had reason to know of the unfitness of Ms. Bunfill and employed  
20 her with a conscious disregard of the rights or safety of others and/or Bebe authorized and/or  
21 ratified Ms. Bunfill's wrongful conduct, so as to subject Bebe to an award of exemplary and/or  
22 punitive damages pursuant to the provisions of California Civil Code Section 3294.

#### 23                               **NINTH CLAIM FOR RELIEF**

24                               Negligent Hiring, Retention, Supervision and Training  
25                               (Against All Defendants)

26           98.     Ms. Allen-Wise realleges and incorporates the allegations in paragraphs 1 through  
27 50 and 68 through 97 above.

1           99.     Bebe was under an affirmative duty and obligation to screen and oversee  
2 employees prior to their hiring and during retention and to train and supervise its employees to  
3 ensure that the employees abide by the laws of the United States and the state of California while  
4 performing their job functions. These laws include, but are not limited to, federal and state anti-  
5 discrimination statutes that prohibit racial discrimination as well as state criminal, statutory and  
6 common law tort laws.

7           100.   Ms. Bunfill was incompetent and/or unfit to perform the duties required of her job  
8 due to her propensity to violate federal and state anti-discrimination statutes that prohibit racial  
9 discrimination as well as her propensity to violate state statutory and common law tort laws,  
10 which resulted in a risk and/or hazard that Ms. Bunfill would, in fact, violate these laws.  
11 Another Bebe employee, Adalia Rubai, advised Ms. Allen-Wise's friend and witness Marlene  
12 McCoy that, since Ms. Bunfill's employment began, Ms. Bunfill had repeatedly acted in a  
13 manner similar to the way in which Ms. Bunfill acted towards Ms. Allen-Wise on June 9, 2003.

14           101.   Bebe knew or had reason to know that Ms. Bunfill was incompetent or unfit to  
15 perform the duties required of her job, and Bebe failed to use reasonable care to discover Ms.  
16 Bunfill's incompetence or unfitness before hiring her and during her retention.

17           102.   Bebe failed and/or refused to provide adequate training and supervision to its  
18 employees, including Ms. Bunfill, to prevent employees, including Ms. Bunfill, from violating  
19 federal and state anti-discrimination statutes that prohibit racial discrimination as well as  
20 violating state statutory and common law tort laws.

21           103.   The conduct of Ms. Bunfill resulted from her incompetence and/or unfitness to  
22 perform the duties required of her job, and that conduct has caused Ms. Allen-Wise to suffer  
23 severe emotional distress, including, but not limited to, humiliation and mental anguish  
24 manifested by anxiety, nervousness, stomach aches, head aches, sleep loss, appetite loss and  
25 depression, among other things, all to Ms. Allen-Wise's damage in an amount to be proven at  
26 trial.

27           104.   The actions of Bebe alleged herein were intentional in nature and committed  
28 maliciously, oppressively and/or fraudulently and in conscious disregard of the rights of Ms.

1 Allen-Wise, so as to subject Bebe to an award of exemplary and/or punitive damages pursuant to  
2 the provisions of California Civil Code Section 3294.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Ms. Allen-Wise demands judgment against each of the defendants as  
5 follows:

6 105. For actual, compensatory, emotional distress, and statutory damages in an amount  
7 to be proven at trial, and trebled by the court;

8 106. For punitive damages against the defendants;

9 107. For a preliminary and permanent injunction prohibiting defendants and  
10 defendants' agents, servants and employees, and all persons acting under, in concert with, or for  
11 them, from denying, and/or aiding and inciting such denial, any person, on the basis of that  
12 person's race: (1) the full and equal accommodations, advantages, facilities, and services of  
13 defendants' business establishment; (2) the right to make and enforce a contract with defendant;  
14 and (3) the right to enjoy all the benefits, privileges, terms and conditions of a contractual  
15 relationship with defendant; and from engaging in unfair and deceptive business practices  
16 including the practice of failing to provide prompt refunds. Bebe should institute a policy of zero  
17 tolerance for racial discrimination against its customers. This policy should include training for  
18 Bebe's employees and discipline as severe as termination for conduct such as that of defendant  
19 Ms. Bunfill so that Bebe's employees shall know and fully understand that they cannot deny  
20 customers equal service on the basis of race, and they cannot perpetrate racial slurs.

21 108. For attorneys' fees and costs of suit incurred herein; and

22 109. For such other and further relief as the Court deems just and proper.

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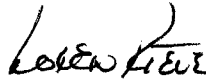
**DEMAND FOR JURY TRIAL**

Ms. Allen-Wise demands a trial by jury for all the issues so triable.

Dated: June 7, 2004

QUINN EMANUEL URQUHART  
OLIVER & HEDGES, LLP

By

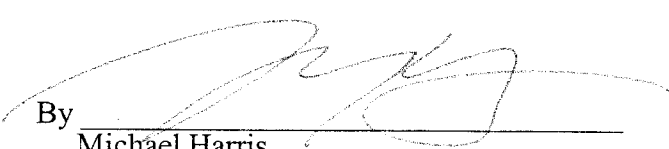


Loren Kieve  
Deepak Gupta  
Bianca Thomas  
Dugan Bliss  
Attorneys for plaintiff Samantha Allen-Wise

Dated: June 7, 2004

LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
OF THE SAN FRANCISCO BAY AREA

By



Michael Harris  
Attorneys for plaintiff Samantha Allen-Wise